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c 380 Plant Diseases Act

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CHAPTER 380

Plant Diseases Act

1. In this Act,

Interpre-
tation

- (a) "Board" means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*; R.S.O. 1980, c. 270
- (b) "dealer in nursery stock" means a person who has for sale plants that were propagated at a nursery and that are kept in the soil of the premises on which they are for sale;
- (c) "Director" means the Director appointed under this Act;
- (d) "inspector" means an inspector appointed under this Act, and includes a municipal inspector;
- (e) "licence" means a licence under this Act;
- (f) "Minister" means the Minister of Agriculture and Food;
- (g) "nursery" means any place where fruit trees, fruit stock or ornamental plants are propagated for sale;
- (h) "plant" means any tree, shrub, vine, tuber, bulb, corm, rhizome or root, or the fruit of any other part of any of them;
- (i) "plant disease" means any disease or injury of a plant that is caused by an insect, virus, fungus, bacterium or other organism and that is designated a plant disease in the regulations;
- (j) "Provincial Entomologist" means the Provincial Entomologist appointed under this Act;
- (k) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 350, s. 1; 1971, c. 50, s. 67 (1); 1978, c. 100, s. 18 (1).

2. No person shall transport or ship from a nursery or premises of a dealer in nursery stock, sell, offer for sale, or ^{Sale, etc., of diseased plants}

have in his possession for sale at a nursery or at premises of a dealer in nursery stock, any plant having a plant disease. R.S.O. 1970, c. 350, s. 2.

Nursery
licence
required

3.—(1) No person shall operate a nursery without a licence therefor from the Director.

Dealer
licence
required

(2) No person, other than a person licensed to operate a nursery, shall be a dealer in nursery stock without a licence therefor from the Director. 1971, c. 50, s. 67 (2).

Director,
Provincial
Entomolo-
gist and
inspectors

4. The Lieutenant Governor in Council may appoint a Director to administer and enforce this Act and may appoint a Provincial Entomologist and one or more inspectors who shall carry out such duties as are assigned to them by this Act or by the regulations or the Director. R.S.O. 1970, c. 350, s. 4.

Licence,
issue

5.—(1) The Director shall issue a licence to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of opinion that the applicant is not in a position to observe or carry out the provisions of this Act and the regulations.

Renewal

(2) Subject to section 6, the Director shall renew a licence on application by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1971, c. 50, s. 67 (3), *part*.

Refusal
to renew,
suspension or
revocation

6.—(1) The Director may refuse to renew or may suspend or revoke a licence if, after a hearing, he is of opinion that the licensee or, where the licensee is a corporation, any officer, director or servant thereof, has contravened or has permitted any person under his control or direction in connection with his business of operating a nursery or dealing in nursery stock, to contravene any provision of this Act or the regulations or of any other Act or the regulations thereunder or of any law applying to the carrying on of the business of operating a nursery or dealing in nursery stock and such contravention warrants such refusal to renew or suspension or revocation of the licence.

Continuation
of licence
pending
renewal

(2) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for a renewal of his licence and paid the prescribed fee and has observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal. 1971, c. 50, s. 67 (3), *part*.

7.—(1) Notice of a hearing by the Director under section 5 or 6 shall afford to the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence. Notice of hearing

(2) An applicant or licensee who is a party to proceedings under section 5 or 6 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1971, c. 50, s. 67 (3), *part*. Examination of documentary evidence

8. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing, he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision, but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1971, c. 50, s. 67 (3), *part*. Variation of decision by Director

9.—(1) Where the Director refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may by written notice delivered to the Director and filed with the Board within fifteen days after receipt of the decision of the Director appeal to the Board. Appeal to Board

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection (1), either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension. Extension of time for appeal

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may, after the hearing, confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director. Powers of Board

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Director, unless the Director otherwise directs, the decision of the Effect of decision pending disposal of appeal

Director is effective until the appeal is disposed of. 1971, c. 50, s. 67 (3), *part*.

Parties

10.—(1) The Director, the appellant and such other persons as the Board may specify are parties to the proceedings before the Board under this Act.

Members making decision not to have taken part in investigation, etc.

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

R.S.O. 1980, c. 484

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Only members at hearing to participate in decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision. 1971, c. 50, s. 67 (3), *part*.

Appeal to court

11.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court.

Minister entitled to be heard

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Record to be filed in court

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board, if it is not part of the Board's record, shall constitute the record in the appeal.

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper, and the court may substitute its opinion for that of the Director or the Board.

Powers of
court on
appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1971, c. 50, s. 67 (3), *part.*

Effect of
decision of
Board
pending
disposal of
appeal

12.—(1) The council of any municipality may by by-law designate any disease or injury of plants, whether or not designated a plant disease in the regulations, and the by-law shall,

Municipal
by-laws

(a) appoint one or more municipal inspectors to enforce this Act, the regulations and the by-law in the municipality with respect to every plant disease and disease of plants designated therein;

(b) fix the remuneration to be paid to municipal inspectors; and

(c) provide for the control or eradication of any disease of plants designated therein.

(2) No by-law passed under subsection (1) takes effect until it is approved by the Minister.

Approval of
by-laws

(3) Every municipal inspector shall, under the direction of the Provincial Entomologist, carry out in the municipality the provisions of this Act, any by-law passed under subsection (1) and the regulations.

Powers and
duties of
municipal
inspectors

(4) For the purposes of sections 13 and 14, a disease of plants that is not designated a plant disease in the regulations and for the control or eradication of which a by-law has been passed under subsection (1) shall be deemed to be a plant disease within the municipality that passed the by-law.

Diseases
designated
in by-law
deemed
plant
diseases

(5) Where a by-law passed under subsection (1) provides for the treatment or destruction by the municipality of any plants located on property that is not owned by or in the possession of the municipality, the municipality may pay any expenses incurred in the treatment or destruction of the plants

Payment
of costs

out of the general funds of the municipality. R.S.O. 1970, c. 350, s. 5.

Power of
entry

13.—(1) Subject to subsection (2), an inspector may, between sunrise and sunset, for the purpose of making an inspection,

- (a) enter any nursery or premises of a dealer in nursery stock;
- (b) enter any vehicle owned or operated by or for the owner of a nursery or a dealer in nursery stock;
- (c) enter any farm, garden, orchard or building in or on which he has reason to believe there are plants;
- (d) enter any premises in which plants are processed and any premises used in connection therewith and in or on which he has reason to believe there are plants having a plant disease or any containers infested with the causal organisms of any plant disease. R.S.O. 1970, c. 350, s. 6 (1); 1971, c. 50, s. 67 (4).

Power
to enter
dwelling
R.S.O. 1980,
c. 400

(2) Except under the authority of a warrant under section 142 of the *Provincial Offences Act*, an inspector shall not enter any part of a dwelling without the consent of the occupant. 1971, c. 50, s. 67 (5).

Obstruction
of inspector

(3) No person shall hinder or obstruct an inspector in the course of his duties or furnish him with false information or refuse to furnish him with information. R.S.O. 1970, c. 350, s. 6 (2).

Disinfection
of diseased
plants, etc.

14.—(1) Where an inspector finds a plant disease or any causal organisms of a plant disease in or on any premises or vehicle, he may order the owner, occupier or person in charge of the premises or vehicle,

- (a) to disinfect any plants, land, building, vehicle or container; or
- (b) to treat or destroy any plants,

in such manner and within such period of time as the order requires.

Prohibition
to grow
certain
plants

(2) Where an inspector finds any causal organisms of a plant disease in the soil of any premises, he may order that the owner or occupier of the premises shall not grow for such period of time as the order requires such species of plants as may become infected by such causal organisms.

(3) Every order under this section shall be in writing ^{Order} and delivered to the owner, occupier or person in charge of the premises or vehicle by an inspector or sent by prepaid mail to his last or usual place of residence. R.S.O. 1970, c. 350, s. 7.

15.—(1) Where the owner, occupier or person in charge of ^{Appeal} any premises or vehicle deems himself aggrieved by an order of an inspector, he may within five days of the receipt of the order appeal against the order by notice to the Provincial Entomologist. R.S.O. 1970, c. 350, s. 8 (1).

(2) Upon receipt of a notice of appeal, the Provincial ^{Powers of Provincial Entomologist on appeal} Entomologist shall, after a hearing, confirm, revoke or modify the order appealed against and may make such order as the inspector might have made and the appellant shall carry out such order as is given by the Provincial Entomologist.

(3) The appellant, the inspector who made the decision ^{Parties} and such other persons as the Provincial Entomologist may specify are parties to proceedings before the Provincial Entomologist under subsection (2).

(4) An appeal under this section may be made in writing ^{How appeal made} or orally or by telephone to the Provincial Entomologist, but the Provincial Entomologist may require the grounds for appeal to be specified in writing before the hearing. 1971, c. 50, s. 67 (6).

16.—(1) Except as provided in subsection (2), every person ^{Offences} who contravenes any of the provisions of this Act or any by-law passed under subsection 12 (1) or the regulations or any order of an inspector or the Provincial Entomologist is guilty of an offence and on conviction is liable, for a first offence, to a fine of not more than \$50 and, for any subsequent offence, to a fine of not less than \$25 and not more than \$200 or to imprisonment for a term of not more than thirty days.

(2) Every person who contravenes any provision of sub- ^{Idem} section 13 (3) is guilty of an offence and on conviction is liable, for a first offence, to a fine of not less than \$100 and, for any subsequent offence, to a fine of not less than \$200. R.S.O. 1970, c. 350, s. 9.

17. The Lieutenant Governor in Council may make regula- ^{Regulations} tions,

(a) designating plant diseases within the meaning of this Act;

- (b) prescribing the duties of the Provincial Entomologist and of inspectors;
- (c) providing for the issue of licences to operate nurseries and to dealers in nursery stock, and prescribing the term thereof and the fees to be paid therefor;
- (d) providing for the establishment of plant disease control areas;
- (e) providing for the control or eradication of any plant disease in any plant disease control area or in any other area;
- (f) providing for the issue of certificates as to the freedom from any plant disease of any plants grown in any nursery, farm, garden, orchard or other place or kept on any premises of a dealer in nursery stock;
- (g) providing for the making of grants by the Minister out of the moneys that are appropriated therefor by the Legislature so as to reimburse any municipality to such extent as is designated for any expense it has been put to under this Act;
- (h) prescribing forms and providing for their use;
- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

R.S.O. 1970, c. 350, s. 10.